

ESTTA Tracking number: **ESTTA228334**

Filing date: **08/05/2008**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	92047976
Party	Defendant Sylvester J. Arena
Correspondence Address	Sylvester J. Arena 2070 West Highway 46 Paso Robles, CA 93446 UNITED STATES
Submission	Defendant's Notice of Reliance
Filer's Name	Sylvester Arena
Filer's e-mail	syl@sylarenaphoto.com
Signature	// Sylvester Arena //
Date	08/05/2008
Attachments	Hiraga - 080805 Notice of Reliance A.doc.pdf (24 pages)(2982581 bytes)

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

Kathleen Hiraga,)	In the matter of trademark
)	Registration No. 3125129
)	Serial No. 78608724
Petitioner,)	For the mark “Garden Organics”
)	Date filed: April 14, 2005
v.)	Date registered: August 1, 2006 (Supplemental)
)	Cancellation No. 92/047976
Sylvester J. Arena,)	
)	
Respondent,)	
)	
)	

RESPONDENT’S NOTICE OF RELIANCE – A

Pursuant to 37 CFR § 2.122(b) and 37 CFR § 2.122(e), Respondent hereby makes of record portions of Respondent’s Application for Registration, Petitioner’s Application for Registration, Petitioner’s Petition for Cancellation and relevant correspondence to/from USPTO relating to these Applications and Petition as follows:

- a. **Petitioner’s May 19, 2005 application for registration** of the mark “Garden Organics” USPTO Serial #78632995.
- b. **Petitioner’s June 5, 2008 Notice of Reliance - Exhibit D**
- c. **USPTO December 14, 2005 Office Action to Petitioner**
- d. **Petitioner’s June 14, 2006 Response to Office Action**
- e. **USPTO’s July 11, 2006 Suspension Letter sent to Petitioner**
- f. **Respondent’s August 1, 2006 Registration Certificate for “Garden Organics”**
- g. **USPTO February 21, 2007 Office Action to Petitioner**

h. Petitioner's August 20, 2007 Petition for Cancellation of Respondent's Registration

Copies of the relevant portions of the cited documents are attached hereto and identified as Exhibits by the paragraph letters listed above. Respondent's citations of the relevance of each of these documents to this proceeding are annotated on the cover page to each of the following Exhibits.

Respectfully submitted,

Date: August 5, 2008

By:

A handwritten signature in black ink, appearing to read "Sylvester J. Arena", followed by a horizontal line.

Sylvester J. Arena – Respondent
2070 West Hwy 46
Paso Robles, CA 93446
Tel: (805) 226-2794

)	In the matter of trademark
Kathleen Hiraga,)	Registration No. 3125129
)	Serial No. 78608724
Petitioner,)	For the mark “Garden Organics”
)	Date filed: April 14, 2005
vi.)	Date registered: August 1, 2006 (Supplemental)
)	Cancellation No. 92/047976
Sylvester J. Arena,)	
)	
Respondent,)	
)	
)	

3

Exhibit A.

Petitioner's May 19, 2005 application for registration of the mark "Garden Organics" USPTO Serial #78632995.

Relevance: Petitioner's application states a date of Petitioner's first use of the mark in commerce as least as early as February 20, 2004 for International Class 031 (*Agricultural and horticultural products, namely, living plants, plant seeds and seedlings*) and International Class 041 (*Educational services, namely, conducting workshops and seminars in the fields of methods for growth and maintenance of edible herbs, flowers, vegetables and fruits, the design and implementation of organic culinary beds, nutrition, recipes and distributing course material in connection therewith*).

The table below presents the data as entered.

Input Field	Entered
MARK SECTION	
MARK	GARDEN ORGANICS
STANDARD CHARACTERS	YES
USPTO GENERATED IMAGE	YES
LITERAL ELEMENT	GARDEN ORGANICS
MARK STATEMENT	The mark consists of standard characters, without claim to any particular font, style, size, or color.
OWNER SECTION	
NAME	Kathleen Hiraga
INTERNAL ADDRESS	House A
STREET	2128 Oak Street
CITY	Santa Monica
STATE	California
ZIP/POSTAL CODE	90405
COUNTRY	United States
PHONE	(310) 399-3520
FAX	(323) 655-9065
AUTHORIZED EMAIL COMMUNICATION	No
LEGAL ENTITY SECTION	
TYPE	INDIVIDUAL
COUNTRY OF CITIZENSHIP	United States
GOODS AND/OR SERVICES SECTION	
INTERNATIONAL CLASS	031
DESCRIPTION	Agricultural, horticultural products and plants; namely, plant starts, transplants and seedlings.
FILING BASIS	Section 1(a)
FIRST USE ANYWHERE DATE	At least as early as 02/20/2004
FIRST USE IN COMMERCE DATE	At least as early as 02/20/2004
SPECIMEN FILE NAME(S)	FILE: E:\EXPORT\DM\MAINBOOK\T-00180522150122H00001\VTYF0003.JPG

Exhibit B.

Petitioner's June 5, 2008 Notice of Reliance - Exhibit D

Relevance: Petitioner has acknowledged in its Notice of Reliance – Exhibit D that:

- Respondent's 'Garden Organics' products appeared on the back cover of the Arena Roses 2004 catalog
- Respondent provided a full copy of said Arena Roses 2004 catalog
- Respondent provided a copy of the December 13, 2003 invoice for the printing of the catalog by ColorGraphics in November, 2003.
- Respondent provided a copy of the December 8, 2003 Postage Statement from the USPS for the mailing of 19,555 copies of the Arena Roses 2004 catalog
- Respondent provided a copy of the December 8, 2003 invoice from Accurate Mailing Service showing that 19,555 catalogs of the Arena Roses 2004 catalog were mailed by Respondent on December 8, 2003.

3. The invoices or other documents that evidence Your date of first use and Your date of first use in interstate or foreign commerce for "GARDEN ORGANICS" for each of the product and/or service categories for which You claim trademark or service mark rights.

[Item 2] RESPONDENT is providing a copy of Invoice #139573, dated December 15, 2003, from Colorgraphics, Inc. (PO Box 51490, Los Angeles, CA 90051-5790). The Petitioner will note that the invoice specifies that CG Job Number 110312/1066 is for the printing of 50,000 copies of the Arena Roses 2004 catalog.

[Item 3] Respondent is providing a copy of the Arena Roses 2004 catalog. Petitioner will note that 'Garden Organics' products appear on the back cover. Petitioner will also note that the original design of the 'Garden Organics' mark is identical to the current design of the 'Garden Organics' mark.

[Item 4] Respondent is providing a copy of Postage Statement filed with the US Postal Service on December 8, 2003 for the mailing of 19,555 catalogs

[Item 5] Respondent is providing a copy of Invoice #5521 from Accurate Mailing Service for list management and handling services for the mailing of 19,555 catalogs on December 8, 2003

ColorGraphics

Please send inquiries to:
ColorGraphics, Inc.
 Dept. Color Rep. Sales
 Los Angeles, CA 90021-5000
 Tel: (213) 241-7100
 Fax: (213) 241-7111

Invoice Number: 109573
 Invoice Date: 12/15/93
 Due Date: 12/15/93
 PO Number:
 Sales Rep: Mark Nureberg
 CO Job Number: 110112/1048
 Batch Number: 44320/0
 Page Number: 1

Invoice

Bill To: 110548
 Syl Arena Roses LLC
 Attn: Syl Arena
 1041 Paso Robles St.
 Paso Robles, CA 93440

Thank you for your business.

Qty Ordered/Qty Billed	Description	Unit Price U/M	Amount
50,000	50,000 1994 PRODUCT CATALOG - TAX EXEMPT		33,433.00
	1,300 - Overs (\$742.00)		
	Customer pre-press alterations		344.00
	50,000 Total Quantity Billed:		
		Net sales:	33,777.00
		Invoice Total:	\$33,777.00
	Less Payment(s) Received		\$-30,000.00
		Amount Due:	\$3,777.00

Terms: 1/3 Adv, 1/3 Proof, Bal COD

Jan 20 2000 03:17PM P1

FORM NO. 818706548

FORM 1-99

SAVE
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Our only 2004 edition

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Local (905) 22-ROSES

ARENA ROSES™

GARDEN LIVING CENTER

California's Finest Garden Roses...delivered to you!
OVER 200 ROSES IN FULL COLOR 2004 EDITION

Visit our Garden Shop & Nursery In Paso Robles – see page 2.



Created especially for our customers.

GARDEN ORGANICS™

BY SYL ARENA ROSES

"We believe in growing roses naturally."

Our GARDEN ORGANICS™ line of products was created by Syl Arena with this philosophy in mind. Since the health of your garden begins with the health of your soil, our GARDEN ORGANICS™ line of fertilizers and soil amendments will help enhance the microbial population of your soil. GARDEN ORGANICS™ delivers plant nutrition in natural forms that will feed your soil as well as your plants.

GARDEN ORGANICS™ - GROWING THE WAY NATURE INTENDED™

1. GARDEN ORGANICS™ ORGANIC ROSE FERTILIZER 7-8-4 is a balanced formula that is high in natural NPK (nitrogen, phosphorus and potassium) and secondary nutrients such as calcium and iron. It also contains many trace minerals and natural growth stimulants derived from organic seaweed, humic and fulvic acids, fish emulsions and other natural materials. The end result is an organic fertilizer that will help improve your soil's beneficial microbial population and enhance the growth of your roses.

GORF05 Garden Organics™ Organic Rose Fertilizer 7-8-4, 5 lbs. \$6 [6 lbs]

GORF20 Garden Organics™ Organic Rose Fertilizer 7-8-4, 20 lbs. \$26 [22 lbs]

GORF50 Garden Organics™ Organic Rose Fertilizer 7-8-4, 50 lbs. \$46 [55 lbs]

2. GARDEN ORGANICS™ MICROBIAL PLANTING POWDER is a beneficial blend of soil microbes in a mix of kelp and alfalfa meal. It contains three strains of endo-mycorrhizal fungi that colonize rose roots and extend into the surrounding soil forming an essential link between the plant and the soil. It also contains Trichoderma fungi which have been shown to suppress root pathogens. Use 2 tablespoons per rose sprinkled in the hole as you are planting to inoculate the roots.

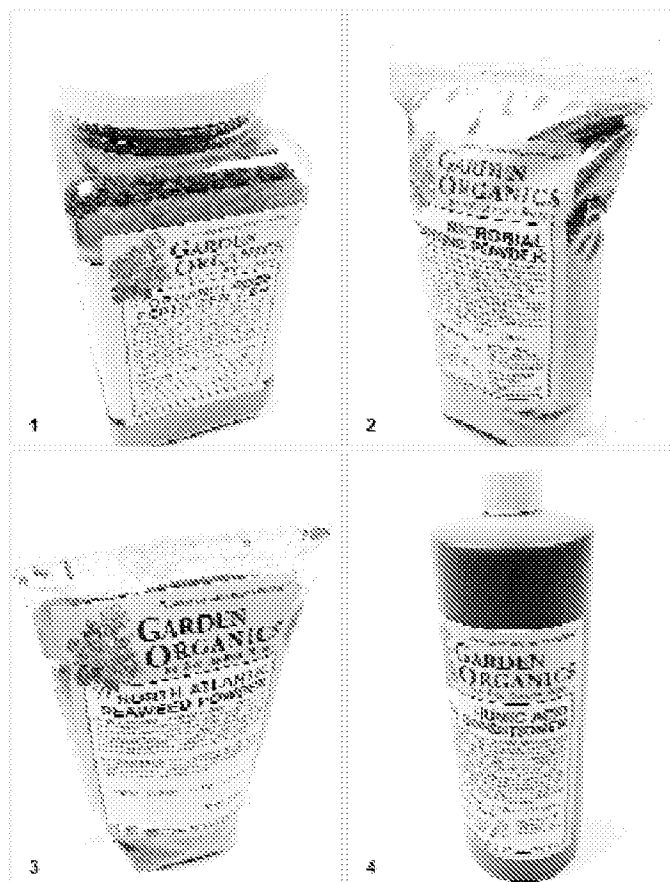
GOMP08 Garden Organics™ Microbial Planting Powder, .5 lb. ≈ 11 roses \$8 [1 lb]

GOMP08 Garden Organics™ Microbial Planting Powder, 1 lb. ≈ 22 roses \$14 [1.5 lbs]

3. GARDEN ORGANICS™ NORTH ATLANTIC SEAWEED POWDER is derived from fresh *Ascophyllum nodosum* marine plants harvested by hand from the North Atlantic coastal waters off Nova Scotia, Canada. It is a natural storehouse of over 60 naturally occurring major and minor nutrients, carbohydrates, amino acids and plant growth promoting substances (cytokinins, auxins, gibberellins) which enhance crop health, nutrition and quality. Use 1 tablespoon per gallon to soak bare roots or as a foliar.

GOSP08 Garden Organics™ Seaweed Powder 0.5 lb., makes ≈ 25 gals \$19 [1 lb]

GOSP16 Garden Organics™ Seaweed Powder 1 lb., makes ≈ 50 gals \$18 [1.5 lbs]



4. GARDEN ORGANICS™ HUMIC ACID SOIL CONDITIONER is a biologically enhanced product that contains humic substances and enzymes. These organic materials help build the soil profile, neutralize pH and increase the cation exchange capacity (CEC) of the soil. It also promotes soil aeration and water penetration by encouraging the flocculation of soil particles. Our Humic Acid may also be used as a fungal food in the brewing of compost tea. Mix 2 tablespoons per gallon.

GOHA1P Garden Organics™ Humic Acid Soil Conditioner, 1 qt. \$6 [1.5 lbs]

GOHA1Q Garden Organics™ Humic Acid Soil Conditioner, 1 qt. \$10 [2.5 lbs]

GOHA1G Garden Organics™ Humic Acid Soil Conditioner, 1 gal. \$36 [10 lbs]

ARENA ROSES™

GARDEN LIVING CENTER™

1041 Paso Robles Street
Paso Robles, California 93446

Please deliver to:

Visit our Garden Shop & Nursery
in Paso Robles – see page 2.

You'll find hundreds of items not listed in this catalog – including a wide selection of garden gifts, outdoor furniture and organics. We're halfway between Los Angeles and San Francisco on Highway 101 – in the heart of the Central Coast wine region. Come for a visit. You'll discover great wine, delicious food, quaint lodging, antique shops, spas and more. See a list of our favorites on page 2.

Enjoy Paso Robles Wine & Roses!

PRSR STD

U.S. POSTAGE

P A I D

SYL ARENA ROSES
LLC

Customer Number

Source Code

Toll-free Tel: 1.888.466.7434 Local Tel: (805) 22-ROSES Internet: www.ArenaRoses.com

Accurate Mailing Service
 PO Box 880
 Paso Robles CA 93447-0880
 805-237-0140 Fax 805-238-0288
 Email: amsinfo@arrival.net

Invoice

DATE	INVOICE NO.
12/8/2003	5523

BILL TO

Syl Arena Roses LLC
 PO Box 3096
 Paso Robles CA 93447-3096

P.O. NO.	TERMS	DUE DATE	PROJECT	
	Due On Receipt	12/8/2003	Catalog 2004	
DESCRIPTION		QTY	RATE	AMOUNT
NCOA Update - Address Update		19,963	0.60726	145.90
Label Printing - Direct Impression w/ address corrections and barcoding		19,555	0.03128	611.09
Sorting and handling		19,555	0.0275	537.76
			Total	\$1,294.75

We appreciate your prompt payment.

THIS BILL IS DUE AND PAYABLE ON PRESENTATION AND PAST DUE 30 DAYS THEREAFTER.
 LATE CHARGE OF 1.02% PER MONTH

Sd 11/27/03 08:02:03

8553861818: 10N 12HJ

FROM 11/27/03

United States Postal Service
Postage Statement — Standard Mail Letters and Flats
Permit Imprint

For return subject to the nonreturnable surcharge and special subject to the residual value surcharge, use Form 3802-RS.

MAILER INFORMATION

Permit Mailer's Name and Address, and Permit Address if Any	Telephone 804-237-0140	Name and Address of Mailing Agent (if other than permit holder)	Telephone	Name and Address of Individual or Organization for which mailing is prepared (if other than permit holder)
Accurate Mailing Service PO Box 880 Paso Robles CA 93447-0880		Accurate Mailing Service PO Box 880 Paso Robles CA 93447-0880		Accurate Mailing Service PO Box 3996 Paso Robles CA 93447-3096
CAPS Code Ref ID		Don & Brokerage No		Don & Brokerage No

MAILING INFORMATION

Post Office of Mailing PASO ROBLES CA	Processing Category (Select One) <input type="checkbox"/> Letters <input checked="" type="checkbox"/> Flats <input type="checkbox"/> Automation Flats (Other Use)	Mailing Date 12/05/2003	Facsimile Agency Code	Statement Page No	MC	Comments
Permit No. 153		Weight of a Single Piece 0.2894 pounds		Total Pieces 19,555		1 Mailings 2 Mailings 3 Mailings Total Mailings
For Mail Enclosed Within Another Class <input type="checkbox"/> Periodicals <input type="checkbox"/> Bound Periodicals <input type="checkbox"/> Library <input type="checkbox"/> Media <input type="checkbox"/> Other		If Backed, Backed on <input type="checkbox"/> 125 Pps <input checked="" type="checkbox"/> 15 Lps <input type="checkbox"/> Bulk		Total Weight 5659.2170		95A 314
For Automation Rate Pieces, Enter Date of Address Matching and Coding (MM/YY) 12/05/2003		For Enhanced Carrier Route Rate Pieces, Enter Date of Address Matching and Coding (MM/YY) 12/05/2003		For Enhanced Carrier Route Rate Pieces, Enter Date of Carrier Route Sequencing (MM/YY) 12/05/2003		

POSTAGE COMPUTATION (Form 3802-RS)

For Automation Letters and Flats (3.3 oz. or less)	Total From Part A (On reverse)	
For Presorted Letters and Flats (3.3 oz. or less)	Total From Part B (On reverse)	
For Enhanced Carrier Route Letters and Flats (3.3 oz. or less)	Total From Part C (On reverse)	
For All Letters and Flats More Than 3.3 oz.	Total From Part D (On reverse)	\$ 7,128.75
Postmaster: Report total postage in NO 136	Total Postage (Add lines above)	\$ 7,128.75

CERTIFICATION

The mailer's signature certifies acceptance of liability for and agreement to pay any revenue deficiencies assessed on this mailing, subject to appeal. If an agent signs this form, the agent certifies that he or she is authorized to sign on behalf of the mailer, and that the mailer is bound by the certification and agrees to pay any deficiencies. In addition, agents may be liable for any deficiencies resulting from matters within their responsibility, knowledge, or control. The mailer hereby certifies that all information furnished on this form is accurate, truthful, and complete; that the mail and the supporting documentation comply with all postal standards and that the mailing qualifies for the rates and fees claimed; and that the mailing does not contain any matter prohibited by law or postal regulation.

I understand that anyone who furnishes false or misleading information on this form or who omits material or information requested on this form may be subject to criminal and/or civil penalties, including fines and imprisonment.

Signature of Mailer or Agent	Name of Mailer or Agent	Telephone 804-237-0140
------------------------------	-------------------------	---------------------------

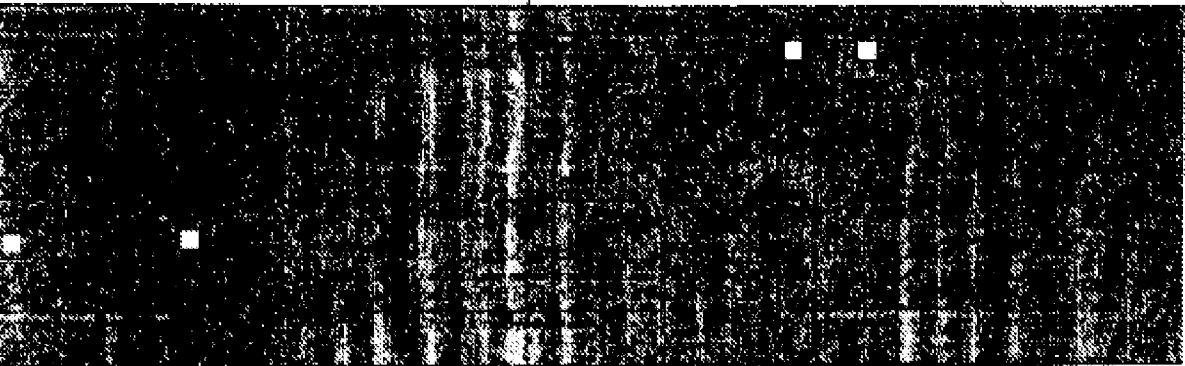


Exhibit C.

USPTO December 14, 2005 Office Action to Petitioner

Relevance: Examining attorney for Petitioner's mark cites Respondent's then-pending Application Serial No. 78608724 and notes "*there may be a likelihood of confusion...*" with Respondent's mark.

UNITED STATES PATENT AND TRADEMARK OFFICE

SERIAL NO: 78/632995	
APPLICANT: Kathleen Hiraga	*78632995*
CORRESPONDENT ADDRESS: Don Thornburgh Don Thornburgh Law Corporation #220 466 Foothill Blvd. La Canada Flintridge CA 91011	RETURN ADDRESS: Commissioner for Trademarks P.O. Box 1451 Alexandria, VA 22313-1451
MARK: GARDEN ORGANICS	
CORRESPONDENT'S REFERENCE/DOCKET NO: N/A	Please provide in all correspondence:
CORRESPONDENT EMAIL ADDRESS: uspto@donthornburgh.com	<ol style="list-style-type: none"> 1. Filing date, serial number, mark and applicant's name. 2. Date of this Office Action. 3. Examining Attorney's name and Law Office number. 4. Your telephone number and e-mail address.

OFFICE ACTION

RESPONSE TIME LIMIT: TO AVOID ABANDONMENT, THE OFFICE MUST RECEIVE A PROPER RESPONSE TO THIS OFFICE ACTION WITHIN 6 MONTHS OF THE MAILING OR E-MAILING DATE.

MAILING/E-MAILING DATE INFORMATION: If the mailing or e-mailing date of this Office action does not appear above, this information can be obtained by visiting the USPTO website at <http://tacr.uspto.gov/>, inserting the application serial number, and viewing the prosecution history for the mailing date of the most recently issued Office communication.

Serial Number 78/632995

The assigned examining attorney has reviewed the referenced application and determined the following.

Search of the Office Records

Information regarding pending Application Serial No. 78608724 is enclosed. The filing date of the referenced application precedes applicant's filing date. There may be a likelihood of confusion between the two marks under Trademark Act Section 2(d), 15 U.S.C. §1052(d). If the referenced application registers, registration may be refused in this case under Section 2(d). 37 C.F.R. §2.83; TMEP §31208.23 seq. Therefore, upon entry of a response to this Office action, action on this case may be suspended pending final disposition of the earlier-filed application.

If applicant believes there is no potential conflict between this application and the earlier-filed application, then applicant may present arguments relevant to the issue in a response to this Office action. The election not to submit arguments at this time in no way limits applicant's right to address this issue at a later point.

Exhibit D.

Petitioner's June 14, 2006 Response to Office Action

Relevance: Petitioner argues that there is no likelihood of confusion between the marks by stating, in part:

- *Applicant notes the Examining Attorney's refusal to register the Applicant's mark, based on the possibility of a likelihood of confusion with the pending application serial number 78/608724 for "GARDEN ORGANICS" under Trademark Act Section 2(d), 15 U.S.C. §1052(d). The owner of the other mark claims the associated goods are "fertilizers, soil conditioners and soil amendments for domestic use". As such, the Applicant respectfully disagrees that consumers could suffer confusion between the third party's fertilizers and the Applicant's seeds and seedlings. By analogy, this would be to suggest that consumers could be confused between sources of gasoline and sources of automobiles. The other party sells goods which fertilize plants, whereas the Applicant sells the plants themselves.*
- *In the case of the Applicant's services in international class 041, the distinction is even more dramatic. The third party sells fertilizer, whereas the Applicant provides educational services. As stated in both the original and the amended version of the Applicant's description of goods and services, these educational services are not education about fertilizers.*

Applicant's mark is suggestive, not descriptive. Because it is suggestive of the goods and services offered under the mark, it is capable of registration on the principal register.

LIKELIHOOD OF CONFUSION

Applicant notes the Examining Attorney's refusal to register the Applicant's mark, based on the possibility of a likelihood of confusion with the pending application serial number 78/608724 for "GARDEN ORGANICS" under Trademark Act Section 2(d), 15 U.S.C. §1052(d). The owner of the other mark claims the associated goods are "fertilizers, soil conditioners and soil amendments for domestic use". As such, the Applicant respectfully disagrees that consumers could suffer confusion between the third party's fertilizers and the Applicant's seeds and seedlings. By analogy, this would be to suggest that consumers could be confused between sources of gasoline and sources of automobiles. The other party sells goods which fertilize plants, whereas the Applicant sells the plants themselves.

In the case of the Applicant's services in international class 041, the distinction is even more dramatic. The third party sells fertilizer, whereas the Applicant provides educational services. As stated in both the original and the amended version of the Applicant's description of goods and services, these educational services are not education about fertilizers. For this reason, the Applicant requests that the Examining Attorney reconsider this objection, and furthermore that the Examining Attorney compare the Applicant's class 031 goods and its class 041 services to the other mark *independently*.

DISCLAIMERS

Because the Examining Attorney has presented arguments that both the word "GARDEN" and the word "ORGANICS" can be considered descriptive, the Applicant is willing to provide the following disclaimers in connection with the mark:

"No claim is made to the exclusive right to use "GARDEN" apart from the mark as shown."

"No claim is made to the exclusive right to use "ORGANICS" apart from the mark as shown."

CONCLUSION

Given the foregoing arguments, Applicant believes the Mark is in condition for publication and requests favorable action. Should the Examining Attorney have any questions, he should feel free to contact Applicant's attorney.

GOODS AND/OR SERVICES SECTION (031)(current)

INTERNATIONAL CLASS	031
DESCRIPTION	
Agricultural, horticultural products and plants; namely, plant starts, transplants and seedlings	
FILING BASIS	Section 1(a)
FIRST USE ANYWHERE DATE	At least as early as 02/20/2004
FIRST USE IN COMMERCE DATE	At least as early as 02/20/2004

GOODS AND/OR SERVICES SECTION (031)(proposed)

INTERNATIONAL CLASS	031
DESCRIPTION	
Agricultural and horticultural products, namely, living plants, plant seeds, and seedlings	
FILING BASIS	Section 1(a)
FIRST USE ANYWHERE DATE	At least as early as 02/20/2004
FIRST USE IN COMMERCE DATE	At least as early as 02/20/2004

Exhibit E.

USPTO's July 11, 2006 Suspension Letter sent to Petitioner

Relevance: Examining attorney suspends Petitioner's application for the mark stating, in part:. *The refusal based on Section 2(e)(1) is maintained and continued... Action on this application is suspended pending the disposition of: Application Serial No(s). 78608724*

UNITED STATES PATENT AND TRADEMARK OFFICE

SERIAL NO: 78/632995

APPLICANT: Kathleen Hiraga

78632995

CORRESPONDENT ADDRESS:

Don Thornburgh
Don Thornburgh Law Corporation
#220
466 Foothill Blvd.
La Canada Flintridge CA 91011

RETURN ADDRESS:

Commissioner for Trademarks
P.O. Box 1453
Alexandria, VA 22313-1451

If no fees are enclosed, the address should include
the words "Office Responses - Fee Paid."

MARK: GARDEN ORGANICS

CORRESPONDENT'S REFERENCE/DOCKET NO: N/A

CORRESPONDENT EMAIL ADDRESS:

uspto@donthornburgh.com

Please provide in all correspondence:

1. Filing date, serial number, mark and applicant's name.
2. Date of this Office Action.
3. Examining Attorney's name and Law Office number.
4. Your telephone number and e-mail address.

Serial Number 78/632995

NOTICE OF SUSPENSION

SUSPENSION PROCEDURE: This suspension notice serves to suspend action on the application for the reason(s) specified below. No response is needed. 37 C.F.R. §2.67. However, the examining attorney will conduct periodic status checks and may issue inquiries at 6 month intervals from the mailing date of this notice. TMEP §716.05. If a status inquiry Office action issues, applicant will have 6 months from the mailing or e-mailing date of the status inquiry to respond. 15 U.S.C. §1062(b); 37 C.F.R. §2.62.

MAILING/E-MAILING DATE INFORMATION: If the mailing or e-mailing date of this Office action does not appear above, this information can be obtained by visiting the USPTO website at <http://tan.uspto.gov/>, inserting the application serial number, and viewing the prosecution history for the mailing date of the most recently issued Office communication.

This letter responds to applicant's communication filed on June 14, 2006.

The applicant has (1) argued against the refusal pursuant to Section 2(e)(1), and (2) submitted an amended identification of goods. The amended identification of goods is acceptable. The refusal based on Section 2(e)(1) is maintained and continued.

Action on this application is suspended pending the disposition of:

- Application Serial No(s). **78608724**

Since applicant's effective filing date is subsequent to the effective filing date of the above-identified application(s), the latter, if and when it registers, may be cited against this application in a refusal to register under Section 2(d) of the Trademark Act, 15 U.S.C. §1052(d). See 37 C.F.R. §2.83; TMEP §§1208 et seq. A copy of information relevant to this pending application(s) was sent previously.

Applicant may submit a request to remove the application from suspension to present arguments related to the potential conflict between the relevant application(s) or other arguments related to the ground for suspension. TMEP §716.03. Applicant's election not to present arguments during suspension will not affect the applicant's right to present arguments later should a refusal in fact issue. If a refusal does issue, applicant will be afforded 6 months from the mailing or e-mailing date of the Office action to submit a response. 15 U.S.C. §1062(b); 37 C.F.R. §2.62.

Exhibit F.

Respondent's August 1, 2006 Registration Certificate for "Garden Organics"

Relevance: Respondent's Registration No. 3,125,129 for the mark subject to the Petition for Cancellation

Int. Cl.: 1

Prior U.S. Cls.: 1, 5, 6, 10, 26, and 46

United States Patent and Trademark Office

Reg. No. 3,125,129

Registered Aug. 1, 2006

**TRADEMARK
SUPPLEMENTAL REGISTER**

Garden Organics

ARENA, SYLVESTER J. (UNITED STATES INDIVIDUAL)

PO BOX 3570

PASO ROBLES, CA 93447

FOR: FERTILIZERS, SOIL CONDITIONERS AND SOIL AMENDMENTS FOR DOMESTIC USE, IN CLASS 1 (U.S. CLS. 1, 5, 6, 10, 26 AND 46).

FIRST USE 11-1-2003; IN COMMERCE 11-1-2003

THE MARK CONSISTS OF STANDARD CHARACTERS WITHOUT CLAIM TO ANY PARTICULAR FONT, STYLE, SIZE, OR COLOR.

NO CLAIM IS MADE TO THE EXCLUSIVE RIGHT TO USE "ORGANICS", APART FROM THE MARK AS SHOWN.

SER. NO. 78-808,724, FILED P.R. 4-14-2005; AM. S.R. 5-12-2006.

RENEE MCCRAY, EXAMINING ATTORNEY

Exhibit G.

USPTO February 21, 2007 Office Action to Petitioner

Relevance: Examining attorney refuses Petitioner's application for registration, stating, in part: *On July 11, 2006, action on this application was suspended pending the disposition of Application Serial No. 78608724. The referenced pending application has since registered. Therefore, registration is now refused as follows. The refusal based on Section 2(e)(1) is maintained and CONTINUED.*

UNITED STATES PATENT AND TRADEMARK OFFICE

SERIAL NO: 78/632995	
APPLICANT: Kathleen Hiraga	*78632995*
CORRESPONDENT ADDRESS: Don Thornburgh Don Thornburgh Law Corporation #220 466 Foothill Blvd. La Canada Flintridge CA 91011	RETURN ADDRESS: Commissioner for Trademarks P.O. Box 1451 Alexandria, VA 22313-1451
MARK: GARDEN ORGANICS	
CORRESPONDENT'S REFERENCE/DOCKET NO: N/A	Please provide to all correspondence:
CORRESPONDENT EMAIL ADDRESS: uspto@donthornburgh.com	1. Filing date, serial number, mark and applicant's name. 2. Date of this Office Action. 3. Examining Attorney's name and Law Office number. 4. Your telephone number and e-mail address.

OFFICE ACTION

RESPONSE TIME LIMIT: TO AVOID ABANDONMENT, THE OFFICE MUST RECEIVE A PROPER RESPONSE TO THIS OFFICE ACTION WITHIN 6 MONTHS OF THE MAILING OR E-MAILING DATE.

MAILING/E-MAILING DATE INFORMATION: If the mailing or e-mailing date of this Office action does not appear above, this information can be obtained by visiting the USPTO website at <http://tmi.uspto.gov/>, inserting the application serial number, and viewing the prosecution history for the mailing date of the most recently issued Office communication.

Serial Number 78/632995

On July 11, 2006, action on this application was suspended pending the disposition of Application Serial No. 78608724. The referenced pending application has since registered. Therefore, registration is now refused as follows.

The refusal based on Section 2(e)(1) is maintained and CONTINUED.

Refusal based on 2(d) -- Likelihood of Confusion

The examining attorney refuses registration under Trademark Act Section 2(d), 15 U.S.C. Section 1052(d), because the applicant's mark, when used on or in connection with the identified goods, so resembles the mark in U.S. Registration No. 3125129 as to be likely to cause confusion, to cause mistake, or to deceive. TMEP section 1207. See the enclosed registration.

The examining attorney must analyze each case in two steps to determine whether there is a likelihood of confusion. First, the examining attorney must look at the marks for similarities in appearance, sound, connotation and commercial impression. *In re E. I. DuPont de Nemours & Co.*, 476 F.2d 1357, 177 USPQ 563 (CCPA 1973). Second, the examining attorney must compare the goods or services to determine if they are related or if the activities surrounding their marketing are such that confusion as to origin is likely. *In re August Storck KG*, 218 USPQ 823 (TTAB 1983); *In re International Telephone and Telegraph Corp.*, 197 USPQ 910 (TTAB 1978); *Guardian Products Co., v. Scott Paper Co.*, 200 USPQ 738 (TTAB 1978).

Exhibit H.

Petitioner's August 20, 2007 Petition for Cancellation

Relevance; Petitioner states that grounds for cancellation of Respondent's mark are:

- *“On information and belief, Petitioner asserts that Respondent fraudulently obtained registration of the mark because Respondent had not used the mark in commerce (as defined by the Act) on the date indicated on Respondent's Application”*
- *“On information and belief, Petitioner asserts that Respondent is not using the mark in commerce and has ceased operation of the associated business on or about May 31, 2006.”*

and
- *“Petitioner will be damaged if Respondent's registration is not cancelled. Respondent's use of its mark in commerce could create a likelihood of confusion with Petitioner's use of its mark.”*

implementation of organic culinary beds, nutrition, recipes and distributing course material in connection therewith".

- (3) The Examining Attorney has cited Respondent's registration as the basis for a Section 2(d) refusal of Petitioner's application for registration.
- (4) The Examining Attorney reviewing Petitioner's application to register its mark has stated that "The marks of the parties are similar in appearance, sound, connotation, and commercial impression, because they are identical. Therefore the similarities in the elements that exist are sufficient to find a likelihood of confusion."

- (5) On information and belief, Petitioner asserts that Respondent fraudulently obtained registration of the mark because Respondent had not used the mark in commerce (as defined by the Act) on the date indicated on Respondent's application.
- (6) On information and belief, Petitioner asserts that Respondent is not using the mark in commerce and has ceased operations of the associated business on or about May 31, 2006.
- (7) Petitioner will be damaged if Respondent's registration is not cancelled. Respondent's use of its mark in commerce could create a likelihood of confusion with Petitioner's use of its mark.

- (8) Accordingly, Petitioner respectfully requests that Respondent's registration be cancelled.
- (9) Payment in the amount of \$300.00 is enclosed in payment of the required filing fee.

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Date: August 20, 2007